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OFFICE OF THE
EXECUTIVE SECRETARY
June 11, 2002

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VIA HAND DELIVERY

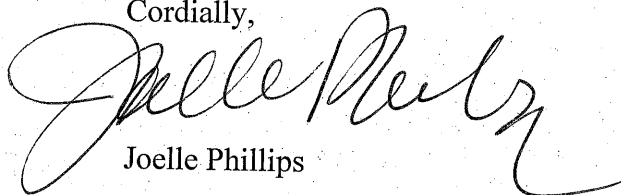
Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to
Declare Switching an Unrestricted Unbundled Network Element*
Docket No. 02-00207

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Motion to Compel Responses to Data Requests from Third Parties: Network Telephone, Business Telecom, Inc., Adelphia Business Solutions, and XO Tennessee, Inc. Copies of the enclosed are being provided to counsel of record.

Cordially,



Joelle Phillips

JP/jej

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to Declare Switching an Unrestricted Unbundled Network Element*

Docket No. 02-00207

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO COMPEL RESPONSES TO DATA REQUESTS
FROM THIRD PARTIES: NETWORK TELEPHONE,
BUSINESS TELECOM, INC., ADELPHIA BUSINESS SOLUTIONS, and
XO TENNESSEE, INC.

BellSouth Telecommunications, Inc. ("BellSouth") files this Motion to Compel responses to its data requests in the above-referenced docket, and respectfully shows the Tennessee Regulatory Authority ("TRA") as follows:

1. On May 24, 2002, BellSouth filed its data requests to third parties in the above-referenced docket. BellSouth filed its third party data requests as directed in the Hearing Officer's Order dated May 13, 2002, footnote 26, which stated:

Discovery requests intended solely to aid the Authority in this fact-finding process may also be served upon any Tennessee-certificated facilities-based competing service providers and shall be answered within the time frame established herein. Although the Authority may employ other means to gather the requisite information, permitting discovery may be the most expedient.

2. The Petition at issue in this proceeding asks the TRA to "declare switching an unrestricted UNE" even though the FCC has ruled that local switching is a UNE only in certain circumstances. See Petition at 9. To the extent that a State commission like the TRA is allowed to create a new UNE in the first place,¹ it is constrained by the same impairment standard the

¹ BellSouth is not waiving its argument, reference in both its Motion to Dismiss and its Reply to Opposition to BellSouth's Motion to Dismiss, that the Authority is prohibited from reinstating a UNE that the FCC has excluded from the national list of UNEs.

FCC must apply in determining whether a network element must be provided on an unbundled basis. 47 C.F.R. § 51.317(b)(4). The FCC, following the Supreme Court's remand of its initial interpretation of the impairment standard, revised its definition of "impair" so as to require unbundling if, "taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, *lack of access* to that element *materially diminishes* a requesting carrier's ability to provide the services it seeks to offer." *UNE Remand Order*, ¶ 51 (emphasis added); 47 C.F.R. § 51.317(b)(1). In determining whether alternative elements are available, the Commission must consider cost, effect on timeliness of entry, quality, ubiquity, and impact on network operations. *UNE Remand Order*,² ¶¶ 65, 71-100; 47 C.F.R. § 51.317(b)(2). BellSouth's discovery requests clearly are designed to aid the TRA in finding facts that will assist the TRA in applying this impairment standard to the Petitioners' request.³

3. On May 30, 2002 (Network Telephone), on June 3, 2002 (Adelphia Business Solutions), and June 5, 2002 (Business Telecom, Inc., and XO, Tennessee, Inc.), the above-referenced third parties filed objections to BellSouth's Data Requests. Those objections challenged BellSouth's ability to file data requests regarding third parties not participating in the docket. In light of the Hearing Officer's Order and the specific reference to third party data requests to assist the TRA, BellSouth respectfully submits that the third party data requests are proper. The TRA is clearly empowered to issue data requests to entities regulated by it in

² See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3690 (1999) ("*UNE Remand Order*").

³ BellSouth acknowledges that the D.C. Circuit Court of Appeals recently remanded the *UNE Remand Order* to the FCC after rejecting the impairment analysis the FCC adopted in that Order. Accordingly, the most prudent course would be to hold this docket in abeyance until the

Tennessee with respect to matters pending before the Authority. In the present case, the Hearing Officer has noted that the most expeditious way to gather information related to the docket may be to rely upon the parties to submit third party data requests either in lieu of, or in addition to, data requests initiated by the Tennessee Regulatory Authority. In this case, the Hearing Officer has elected to rely, at least in part, on third party data requests formulated by parties in the docket. This decision alleviates administrative burden on the Tennessee Regulatory Authority and is within its discretion.

4. In the alternative, BellSouth submits that, in the event the Tennessee Regulatory Authority upholds the objections and excuses the objecting parties from responding to BellSouth's data requests, that the TRA direct its Staff to submit the questions posed by BellSouth to each of the objecting parties as Staff data requests to ensure the Authority has access to the information sought in BellSouth's third party data requests.

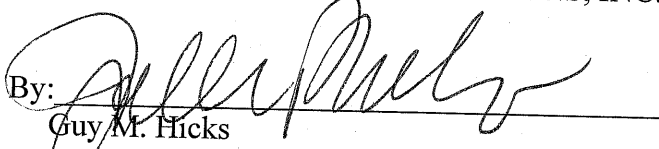
5. In the alternative, BellSouth respectfully requests that the Hearing Officer modify the schedule that has been established in this docket in order to provide BellSouth enough time to obtain from the TRA subpoenas, requesting this information, to serve those subpoenas on the objecting entities, and to receive responses to those subpoenas prior to the filing of any testimony in this docket. In the spirit of the provisions of the Hearing Officer's order quoted above, and in the interest of avoiding delay, BellSouth did not take this approach initially. If the objections of Network Telephone, Business Telecom, Inc., Adelphia Business Solutions, and XO, Tennessee, Inc. are sustained, however, BellSouth should not be deprived of the opportunity to obtain this relevant information by other available means.

impairment standard that is to govern these proceedings is ultimately decided in accordance with the D.C. Circuit's opinion.

6. For the forgoing reasons, BellSouth respectfully moves to compel responses to its third party data requests, consistent with the Hearing Officer's Order dated May 13, 2002.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

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